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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0125]

#### **Columbia Body Manufacturing Co.; Receipt of Petition for Temporary Exemption from FMVSS No. 224**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of receipt of petition for temporary exemption from FMVSS No. 224, Rear Impact Protection; request for comment.

**SUMMARY:** In accordance with 49 CFR Part 555, NHTSA seeks comments on a petition for exemption from Federal Motor Vehicle Safety Standard (FMVSS) No. 224, Rear impact protection by Columbia Body Manufacturing Co. (“Columbia Body” or “petitioner”) of Clackamas, Oregon. Columbia Body is seeking a three year exemption from the standard, asserting that compliance with the standard would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We are publishing this notice of receipt of the application in accordance with our exemption regulations. This action does not mean that we have made a judgment about the merits of the application.

**DATES:** Comments on this petition must be submitted by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** For legal questions, contact Mr. Ryan Hagen, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building 4<sup>th</sup> Floor, Washington, D.C. 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820. For technical questions, contact Mr. Robert Mazurowski,

Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building 4<sup>th</sup> Floor, Washington, D.C. 20590. Telephone: (202) 366-1012; Fax: (202) 493-2990.

**ADDRESSES:** You may submit your comment, identified by the docket number in the heading of this document, by any of the following methods:

- Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help and Information” or “Help/Info.”
- Fax: 1-202-493-2251.
- Mail: U.S. Department of Transportation, Docket Operations, M-30, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday, except Federal Holidays. Telephone: (202) 366-9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review

DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.dot.gov/privacy.html>.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Statutory Authority for Temporary Exemptions**

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified at 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary of Transportation has delegated the authority for implementing this section to NHTSA.

In recognition of the more limited resources and capabilities of small manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts is provided in the Safety Act to enable the agency to give those manufacturers additional time to comply with the Federal safety standards. The Safety Act authorizes the Secretary to grant a temporary exemption to a manufacturer whose total motor vehicle production in the most recent

year of production is not more than 10,000 motor vehicles, on such terms as the Secretary deems appropriate, if the exemption would be consistent with the public interest and the Safety Act and “compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.” (49 U.S.C § 30113(b)(3)(B)(i)).

NHTSA established 49 CFR Part 555, Temporary Exemption from Motor Vehicle Safety and Bumper Standards, to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of the Safety Act (49 U.S.C. Chapter 301).<sup>1</sup> A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

## **B. Rear Impact Protection**

FMVSS No. 224, Rear impact protection,<sup>2</sup> requires that all trailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds (lb)) or more be fitted with a rear impact guard that conforms to FMVSS No. 223, Rear impact guards.<sup>3</sup> This requirement, however, has presented problems for certain specialized vehicles, such as road construction vehicles where interaction between the rear impact guard and the specialized paving or dumping

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<sup>1</sup> While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a “temporary basis,” (49 U.S.C. 30113(b)(1)) the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency’s decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer’s ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

<sup>2</sup> 49 CFR 571.224.

<sup>3</sup> 49 CFR 571.223.

equipment can cause engineering challenges. In 2004, NHTSA finalized a rule that excludes road construction controlled horizontal discharge semitrailers (RCC horizontal discharge trailers), which discharge asphalt to a paving machine by use of a mechanical drive and conveyor belt.<sup>4</sup> In that final rule, NHTSA concluded that the installation of rear impact guards would interfere with the intended function of the trailers and were impractical, given the design and mission of these trailers.

The 2004 final rule decided against a regulatory exemption for gravity feed dump trailers, which do not have the mechanical drive and conveyor belt as discussed above, because gravity feed dump trailers can be versatile vehicles used for a wide variety of tasks. Creating an exemption in the regulation itself for gravity feed dump trailers could potentially permit a large vehicle population with greater exposure than RCC horizontal discharge trailers to be exempted from the standard. Instead, NHTSA anticipated dealing with gravity feed dump trailers through the exemption process.<sup>5</sup> Prior to that final rule, NHTSA had granted an exemption to gravity feed dump trailers manufactured by Columbia Body.<sup>6</sup> Since that final rule, NHTSA has continued to grant exemptions to manufacturers of gravity feed dump trailer manufacturers through the procedures in 49 CFR Part 555.<sup>7</sup>

### **C. Overview of Columbia Body's Petition**

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<sup>4</sup> 69 FR 67663 (November 19, 2004). Available at: <https://www.federalregister.gov/articles/2004/11/19/04-25703/federal-motor-vehicle-safety-standards-rear-impact-guards-final-rule> (last accessed on November 5, 2015).

<sup>5</sup> *Id.* at 67666.

<sup>6</sup> 68 FR 7406 (February 13, 2003). Available at: <http://www.regulations.gov/contentStreamer?documentId=NHTSA-2002-13955-0004&disposition=attachment&contentType=pdf> (last accessed on November 6, 2015).

<sup>7</sup> See: 69 FR 30989 (June 1, 2004), available at: <https://www.federalregister.gov/articles/2004/06/01/04-12334/reliance-trailer-co-llc-grant-of-application-for-renewal-of-temporary-exemption-from-federal-motor> (last accessed on November 6, 2015), and 74 FR 42142 (August 20, 2009), available at: <https://www.federalregister.gov/articles/2009/08/20/E9-19956/beall-corporation-grant-of-application-for-a-temporary-exemption-from-fmvss-no-224> (last accessed on November 9, 2015).

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Columbia Body of Clackamas, Oregon, a trailer manufacturer, has petitioned the agency for a three year temporary exemption from the rear impact protection requirements in FMVSS No. 224 based on substantial economic hardship.

Columbia Body is a small business that currently employs 40 full time employees and has annual sales of \$5-6,000,000. It produces two, three, and four axle “dump style” trailers that use a hydraulic hoist to raise the front end of the trailer and discharge its load through the tailgate. Columbia Body has produced an average of 17 non-gravity feed dump trailers a year over the last three years. Recently, many of Columbia Body’s gravity feed dump body competitors have gone bankrupt, leading purchasers to request the trailers from Columbia Body. Given the recent requests, Columbia Body seeks to ensure it is able to fill any potential orders. If the exemption were granted, Columbia Body projects that it would sell no more than 50 of the exempted trailers per year. Columbia Body states that the trailers in question are designed specifically for use with paving machines. Without an exemption, Columbia Body states it will suffer substantial economic hardship, projecting it will have to lay off seven or eight of its 40 employees starting in 2016.

In its application, Columbia Body provides specific financial information from the last three years. In 2012, Columbia Body posted a net loss of \$108,000, followed by a \$215,000 loss in 2013. In 2014, it posted a net profit of \$302,000. If an exemption is not granted, Columbia Body projects it will post a \$169,000 net profit for 2016, in comparison to \$1 million net profit if an exemption is granted.

Columbia Body states that it has put forth a good faith effort to comply with FMVSS No. 224, however, is not possible for the company to do so at a price, and with the utility its

customers require. Specifically, the rear end of the type of trailer in question interfaces with the front end of an asphalt paving machine, dumping hot asphalt into the paving machine's receiver. To establish this connection, the paving machine hooks to the rear wheels of the dump trailer. In order to prevent asphalt from spilling out while being transferred from the dump trailer to the paving machine, the paving machine fits 16 to 18 inches beneath the bottom of the dump trailer. The interaction between the dump trailer and paving machine occurs in the space where an underride guard would otherwise reside.

Columbia Body states that it has looked into possible solutions to this problem, including \$50,000 in research in 2005 and 2006 to evaluate solutions to comply with FMVSS No. 224. One solution included adding removable underride guards. Columbia Body states, however, that "[e]ven if we could install a removable underride guard it will put equipment operators in an unsafe situation installing and removing the guard." The petitioner states that the area where a removable underride guard would be installed is often covered in asphalt buildup. Additionally, Columbia Body believes that the cleaning, maintenance, and heavy impacts on the underride guard and the area immediately around it when contacting the paving machine would affect the structural integrity of the underride guard.

Another solution Columbia Body states it looked into involved constructing a sub-frame "with the ability to slide the dump body forward when in transit and slide it to the rear to provide the proper over hang [sic] when paving." Columbia Body states that although this design is possible, conversations with prospective customers indicate the design "would not be acceptable" because of the added cost and weight associated with building such a structure.

Columbia Body states that so long as the paving industry continues to use the same method of paving roads, it remains a physical impossibility to manufacture this type of trailer and comply with FMVSS No. 224.

In support of its petition for exemption, Columbia Body notes that gravity feed dump trailers see limited highway exposure due to their function. Specifically, the trailers themselves are on the road for short periods of time. “Asphalt batch plants are typically set close to the paving activity to limit time traveling between the two paving activities.” Additionally, the petitioner states that in many instances, these paving machines are often performing their transport tasks away from the driving public in restricted access construction areas.

Finally, Columbia Body believes its ability to obtain an exemption is in the public interest. Columbia Body has informed NHTSA that customers requesting its gravity feed dump trailers are doing so in order to pave local roadways. Many purchasers are local municipalities, or companies that support local municipalities in creating and maintaining roads for the traveling public. Therefore, the petitioner believes supplying gravity feed dump trailers is in the public interest.

#### **D. Completeness and Comment Period**

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested exemption. The agency has concluded that Columbia Body’s petition is complete and that it is eligible to apply for a temporary exemption. The agency has not made any judgment on the merits of the application. NHTSA has placed a non-confidential copy of the petition in the docket.



The agency seeks comment from the public on the merits of Columbia Body's petition for a temporary exemption from FMVSS No. 224. After considering public comments and other available information, we will publish a notice of final action on the petition in the Federal Register.

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Raymond R. Posten,  
Associate Administrator for Rulemaking.

Billing Code 4910-59-P

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